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SUBJECT: COSTA RICA INCSR REPORT 2009-2010 PART II MONEY LAUNDERING AND FINANCIAL CRIMES

REF: STATE 117246

The text of Costa Rica's 2009-2010 INCSR Part II is below. POC at Post is Robert B. Andrew.

Costa Rica

Costa Rica is not a major regional financial center but remains vulnerable to money laundering and other financial crimes. Illicit proceeds from fraud; trafficking in persons, arms and narcotics trafficking (mainly cocaine); corruption; and unregulated Internet gaming companies likely are laundered in Costa Rica. While local criminals are active, the majority of criminal proceeds laundered derive primarily from foreign criminal activity. In 2002, the Government of Costa Rica (GOCR) enacted Law 8204, which criminalized the laundering of proceeds from crimes carrying a sentence of four years or more. In theory, Law 8204 applied to the movement of all capital. However, its articles and regulations were narrowly interpreted so the law applied to those entities involved in the transfer of funds as a primary business purpose, such as banks, exchange houses and stock brokerages. It did not cover entities such as casinos, dealers in jewels and precious metals, insurance companies; intermediaries such as lawyers, accountants or broker/dealers; or Internet gambling operations. In March 2009, Costa Rica passed Law 8719, an anti-terrorist financing/money laundering regulation to address Law 8204's weaknesses and close money-laundering loopholes.

Costa Rican financial institutions are regulated by the Superintendent General of Financial Entities (SUGEF), Superintendent General of Securities (SUGEVAL), and the Superintendent of Pensions (SUPEN). All three entities fall under the National Council of Supervision of the Financial System (CONASSIF). In 2009, Costa Rica's Constitutional Court re-affirmed SUGEF's financial authority to require banks to "know their customer" and to explain suspicious money movements.

Law 8204 also established Costa Rica's Financial Analysis Unit, known as the UAF. However, to comply with Egmont Group guidelines, Law 8719 created Costa Rica's official financial intelligence unit known as the UIF, which replaced the UAF. Law 8204 obligates financial institutions and other businesses to identify the beneficial owners of all accounts; retain financial records for at least five years; and, report currency transactions over $10,000 and suspicious transactions, regardless of the amount involved or transaction to the UIF. Law 8204 does not establish any protection for reporting individuals, however failure to file suspicious transaction reports (STRs) can result in monetary sanctions established in Article 81 of the law. The UIF requests, collects and analyzes STRs submitted by obligated entities and cash transaction reports (CTRs) it receives.

The UIF has regulatory responsibilities relating to information and reporting requirements detailed in Law 8719. The UIF has access to the records and databases of financial institutions and other government entities, but the Judicial Investigative Organization (OIJ) must obtain a court order if the information collected is to be used as evidence in court. Additionally, there are formal mechanisms in place to share information domestically and with other countries' FIUs. Prior to 2009, the UIF (then know as the UAF) was somewhat ill-equipped and under-funded to provide information needed by investigators. However, in 2009 the UIF hired four additional forensic auditors, and one investigator to bring total staffing to 28. The UIF considers itself to be adequately staffed and funded. In 2009, the UIF increased the quality of its analysis and forwarded many thoroughly analyzed cases to prosecutors. In 2009, the UIF received 518 STRS and forwarded 49 for to the OIJ's Financial Investigation Unit of the Money Laundering, Financial, and Economic Crimes Unit, which is under the Public Ministry (Prosecutor's Office). This investigation unit has adequately trained staff. As of the submission of this report, Post did not yet have numbers of prosecutions for money laundering in 2009.

The UIF does not directly receive CTRs. Each superintendence that receives CTRs holds the CTRs unless it determines that further analysis is required or the UIF requests the CTRs. After analysis, if the UIF thinks that a CTR warrants further investigation, the CTRs would be forwarded to OIJ's UIF for investigation.

The GOCR reports that Costa Rica is primarily used as a bridge to

send funds to and from other jurisdictions using, in many cases, companies or established banks in offshore financial centers. All persons carrying over $10,000 when entering or exiting Costa Rica are required to declare it to Costa Rican officials at ports of entry. Declaration forms are required. Cash smuggling reports are entered into a database maintained by ICD and are shared with appropriate government agencies, including the UIF. The OIJ reports that currency smuggling continues to increase at land borders; also, money laundering may be occurring through the use of wire-transfer services. Alternative remittance systems exist in Costa Rica, mainly as a result of migration of Costa Ricans to the United States, and Nicaraguans to Costa Rica. However, there is no confirmation that these remittance systems are used for money laundering. According to the GOCR, there is a black market for smuggled goods in Costa Rica, but the size is not known. There is no evidence that it is being funded by narcotics or other illicit proceeds.

There are 28 free trade zones (FTZs) within Costa Rica, used by approximately 251 companies. Costa Rica's Foreign Commerce Promotion Agency (PROCOMER) manages the FTZ regime and has responsibility for registering all qualifying companies. PROCOMER's qualification process consists of conducting due diligence on a candidate company's finances and assessing the total cost of ownership. PROCOMER annually audits all of the firms within the FTZ regime and touts its system of tight controls aimed primarily at preventing tax evasion. The four major types of firms operating under Costa Rica's FTZ regime are manufacturing, professional services, trading, and administrative organizations. PROCOMER reports that there was no evidence of trade-based money laundering activity in the FTZs in 2009.

The formal banking industry in Costa Rica is tightly regulated, which offers banking and corporate and trusts formation services. Foreign-domiciled offshore banks can only conduct transactions under a service contract with a domestic bank, and they do not engage directly in financial operations in Costa Rica. They must also have a license to operate in their country of origin. Furthermore, they must comply with Article 147 of the Costa Rican Central Bank's Organic Law, which requires offshore banks to have assets of at least $3 million dollars, be domiciled at a banking facility approved by the Central Bank, and be subject to supervision by the banking authorities of their registered country. Shell banks are not allowed in Costa Rica and regulated institutions are forbidden from having any direct or indirect relationships with institutions that may be described as shell

banks or fictitious banks. Bearer shares are not permitted in Costa Rica.

As a result of the entry into force of the SUGEF Agreement 8-08 dated December 18, 2008, financial groups that had offshore banks either received a Costa Rican license to operate or they are now under the supervision of a foreign banking authority. Prior to this agreement there were 6 offshore banks operating in Costa Rica. Since December 2008, four of those offshores transferred their assets/liabilities to local banks (2 of those 4 actually merged with local banks); one no longer operates in Costa Rica; and one received its license to operate in compliance with articles 44 and 72 of this SUGEF Agreement.

There are memoranda of understanding (MOUs) between Costa Rica and Panama and the Bahamas to allow easy information exchanges. The GOCR has supervision agreements with its counterparts in both countries, permitting the review of correspondent banking operations.

Gambling is legal in Costa Rica, and in April of 2008, five government decrees established new rules to better identify casino ownership and regulate operations. None addressed online casinos and there is no requirement that the currency used in Internet gaming operations be transferred to Costa Rica. There are over 250 Internet sports-book companies registered to operate in Costa Rica. The industry, which normally moves USD 12 billion annually and employs 10,000 people, estimates that their transactions have decreased by twenty percent this year. In light of this, sports books are turning to new markets in Asia and Europe.

Articles 33 and 34 of Law 8204 cover asset forfeiture and stipulate that all movable or immovable property used in the commission of crimes covered by this act shall be subject to preventative seizure. When an asset seizure or freeze takes place, the property is placed in a legal deposit under the control of ICD. The banking industry closely cooperates with law enforcement efforts to trace funds and seize or freeze bank accounts. During 2009, officials seized over $2.4 million in narcotics-related assets. Seized assets are processed by the ICD and if judicially forfeited, are divided among drug treatment agencies (60 percent), law enforcement agencies (30 percent), and the ICD (10 percent) or as determined by ICD's council. It is unclear whether the GOCR will assist other countries in obtaining non conviction-based forfeiture since its domestic laws only provide for conviction-based forfeiture.

Costa Rica is a party to the major United Nations counterterrorism conventions, including the UN Convention for the Suppression of the Financing of Terrorism. It also passed a terrorist financing law, Law 8719 in March, 2009.

Costa Rican authorities receive and circulate to all financial institutions the names of suspected terrorists and terrorist organizations listed on the UN 1267 Sanctions Committee consolidated list and the list of Specially Designated Global Terrorists designated by the United States pursuant to Executive Order (E.O.) 13224. However, these authorities cannot block, seize, or freeze property without prior judicial approval.

No assets related to designated individuals or entities were identified in Costa Rica in 2009. However, according to the GOCR there is some evidence of FARC (Revolutionary Armed Forces of Colombia) money laundering operations here. In April 2008, based on information obtained from a laptop used by FARC leader Raul Reyes, Costa Rican authorities raided the residence of a university professor and his spouse and found $480,000 in cash that was believed to be a "cash reserve" for the FARC in Costa Rica. However, at that time the anti-terrorist financing law (Law 8719) was not in place and no charges were filed at that time. There has been no further action by the prosecutor's office against this couple.

Costa Rica fully cooperates with appropriate United States government law enforcement agencies and other governments investigating financial crimes related to narcotics and other crimes. Articles 30 and 31 of Law 8204 grant authority to the UIF

to cooperate with other countries in investigations, proceedings, and operations concerning financial and other crimes covered under that law.

Costa Rica is a party to the 1988 UN Drug Convention, the UN Convention for the Suppression of the Financing of Terrorism, the UN Convention against Transnational Organized Crime, and the UN Convention against Corruption. The GOCR is a member of the Money Laundering Experts Working Group of the OAS Inter-American Drug Abuse Control Commission (OAS/CICAD). Costa Rica is a member of the Caribbean Financial Action Task Force (CFATF), a Financial Action Task Force (FATF) style regional body. The CFATF conducted a mutual evaluation of Costa Rica in 2006. During the CFATF Plenary in St. Kitts and Nevis in November 2008, the GOCR reported on actions taken to comply with recommendations made by the team of experts who evaluated the GOCR's anti-money laundering regime in ¶2006. There were modifications to Bill 17009 (which became Law 8719) and 8204 to clarify the filing of STRs to the UIF, among others.

In October 2009, the Costa Rican legislature put on its agenda a bill to better regulate and tax casinos and other gaming establishments. We do not expect passage of this bill before February 2010 elections.

USG initiatives for 2010 include a Department of Treasury Office of Technical Assistance (OTA) Resident Advisor to implement a financial enforcement program for Costa Rica. This will be funded via the Merida Initiative and should provide Costa Rica's financial enforcement institutions (such as ICD, SUGEF, Ministry of Finance, etc.) with more effective tools to combat financial crimes such as money laundering. OTA assistance also includes technical support on reforming Costa Rica's gambling law, which would cover internet gambling as well. This OTA assistance directly led to the Ministry of Finance's authorship of a gambling bill that is at the National Assembly for consideration.
BRENNAN